

§ 176.70

2 CFR Ch. I (1–1–10 Edition)

§ 176.70 Policy.

Except as provided in § 176.80 or § 176.90—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work (see definitions at §§ 176.140 and 176.160) unless—

(1) The public building or public work is located in the United States; and

(2) All of the iron, steel, and manufactured goods used in the project are produced or manufactured in the United States.

(i) Production in the United States of the iron or steel used in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.

(ii) There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.

(b) Paragraph (a) of this section shall not apply where the Recovery Act requires the application of alternative Buy American requirements for iron, steel, and manufactured goods.

§ 176.80 Exceptions.

(a) When one of the following exceptions applies in a case or category of cases, the award official may allow the recipient to use foreign iron, steel and/or manufactured goods in the project without regard to the restrictions of section 1605 of the Recovery Act:

(1) *Nonavailability.* The head of the Federal department or agency may determine that the iron, steel or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of non-availability of the articles listed at 48 CFR 25.104(a) and the procedures at 48 CFR 25.103(b)(1) also apply if any of those articles are manufactured goods needed in the project.

(2) *Unreasonable cost.* The head of the Federal department or agency may determine that the cost of domestic iron, steel, or relevant manufactured goods will increase the cost of the overall project by more than 25 percent in accordance with § 176.110.

(3) *Inconsistent with public interest.* The head of the Federal department or agency may determine that application of the restrictions of section 1605 of the Recovery Act would be inconsistent with the public interest.

(b) When a determination is made for any of the reasons stated in this section that certain foreign iron, steel, and/or manufactured goods may be used—

(1) The award official shall list the excepted materials in the award; and

(2) The head of the Federal department or agency shall publish a notice in the FEDERAL REGISTER within two weeks after the determination is made, unless the item has already been determined to be domestically nonavailable. A list of items that are not domestically available is at 48 CFR 25.104(a). The FEDERAL REGISTER notice or information from the notice may be posted by OMB to Recovery.gov. The notice shall include—

(i) The title “Buy American Exception under the American Recovery and Reinvestment Act of 2009”; and

(ii) The dollar value and brief description of the project; and

(iii) A detailed written justification as to why the restriction is being waived.

§ 176.90 Non-application to acquisitions covered under international agreements.

Acquisitions covered by international agreements. Section 1605(d) of the Recovery Act provides that the Buy American requirement in section 1605 shall be applied in a manner consistent with U.S. obligations under international agreements.

(a) The Buy American requirement set out in § 176.70 shall not be applied where the iron, steel, or manufactured goods used in the project are from a Party to an international agreement, listed in paragraph (b)(2) of this section, and the recipient is required